



**Susan R. Herman, Director**

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WRITTEN TESTIMONY OF SUSAN HERMAN  
DIRECTOR OF THE MICHIGAN JEWISH CONFERENCE

THE STATE HOUSE OF REPRESENTATIVES, JUDICIARY COMMITTEE  
REP. MARK MEADOWS, CHAIR

Dec. 14, 2009

Chairman Meadows, Vice Chair Schuitmaker and members of the committee, thank you for taking the time to address this critical issue of public defense. Thank you for the opportunity to provide this testimony.

My name is Susan Herman, and I serve as the director of the Michigan Jewish Conference, which was established in 1992 to serve the political and community relations needs of the statewide Jewish community through legislative advocacy and coalition building with other statewide religious and social justice organizations.

The Michigan Jewish Conference believes that Michigan's public defense system is failing and in need of reform. Every individual, regardless of income or background, has a constitutional right to an effective defense. A state-funded public defense system that meets the Eleven Principles of a Public Defense Delivery System would ensure a more effective, efficient and ethical system that upholds this fundamental constitutional right, and we are pleased that you are considering legislation to accomplish this important goal.

As early as Deuteronomy 16:20 we hear the words, "*Justice, justice you shall pursue.*" – Codified in the Sixth Amendment of the United States Constitution which states "in all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of Counsel for his defense." The constitution does not make a distinction between those who can and those who cannot afford an attorney. In Michigan, however, those who cannot afford an attorney are often denied this right.

The National Legal Aid and Defender Association (NLADA) found, in a year-long study of ten representative Michigan counties, that many individuals are not represented at pre-trials in some jurisdictions, even when an attorney has been requested. In other jurisdictions, requests for counsel are denied in misdemeanor cases for which there is no potential jail sentence, regardless of the collateral consequences that an individual may have to face if convicted. Court observations revealed that many individuals – both adults and children – waive their right to counsel in part because of the fees that may be assessed if counsel is requested, or because they are told to speak to the prosecutor to work out a deal before considering a request for counsel.

This is not the justice that is a part of our religious heritage or that our founding fathers intended. Michigan does not have any statewide eligibility standards or screening that is uniformly applied for providing representation. In addition, there are not any statewide requirements for or enforcement of prompt appointment of counsel.

Furthermore, for those that are granted a public defense lawyer, their lawyers often are overworked and under-resourced. For example, there is little to no funding for investigative resources or expert witnesses and individuals often meet their lawyers for the first time just a few minutes before court hearings because of unmanageable workloads. Additionally there is no statewide standard or requirement for training for public defense lawyers.

In Michigan, recent exonerations of wrongfully incarcerated individuals such as Walter Swift and Ken Wyniemko has clearly demonstrated that change must be made in order to ensure a system that promotes justice and public safety.

The failures of our state's public defense system are evident in these cases. Swift spent twenty-six years in prison for a crime he did not commit. The public defense attorney in Swift's case did not present crucial forensic evidence that would have helped to prove his innocence, nor did the attorney question a police officer about the identification procedure used or cross-examine one of the scientific lab technicians. This attorney lost his license to practice law three times after Swift was convicted.

A working public defense system would include monitoring of attorney performance and ensure that attorneys receive cases for which they are trained and experienced to handle.

In Ken Wyniemko's case, his first attorney failed to return a multitude of calls and then quit. The second attorney had only two days to prepare – over a weekend. Crucial biological evidence that would have supported Wyniemko's innocence claim was never even analyzed, let alone presented in court. After more than eight years in prison, DNA testing proved him innocent. For each person that is locked up for a crime that she or he did not commit, the real perpetrator may still be free on the streets to commit additional crimes.

The pursuit of justice is a core Jewish value and also a fundamental principle of American democracy. Michigan's public defense system has been singled out numerous times over the past few decades for its failures in upholding the constitutional right to counsel. The Michigan Jewish Conference believes it is time now for lawmakers to act and ensure that Michigan residents have a justice system that works for all. Thank you for the opportunity to submit this testimony and thank you for considering carefully the legislation now before you.

*"On three things does the world endure: justice, truth, and peace..." – Pirkei Avot 1:18a*

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